

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

RONNIE MILLER,
ADC #121073

PLAINTIFF

v.

3:07CV00170JMM/HLJ

GERALD BISHOP

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge James M. Moody. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the

hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff filed this action pursuant to 42 U.S.C. § 1983 against defendant (identified at that time as “M. Bishop”) on November 7, 2007, and his application to proceed in forma pauperis was granted by Order dated November 14, 2007 (DE #3). Pursuant to the Order, summons was issued as to the defendant, but was returned, unexecuted, on January 4, 2008 (DE #5).

On February 4, 2008, this Court granted plaintiff’s motion and appointed attorney Clyde Hance as counsel for the plaintiff for the limited purpose of obtaining service on defendant (DE #13). After receiving no response from plaintiff or his attorney for several months, the Court directed attorney Hance, by Order dated June 27, 2008, to notify it about progress made toward obtaining service on defendant (DE #20). The Court received a response from attorney Hance and from plaintiff, indicating that the correct identification of the defendant may be “Gerald Bishop”, who was employed at one time at the Crittenden County Sheriff’s Office as a Deputy Sheriff. The Court then directed attorney Hance to locate the last-known address of defendant (DE #26).

Pursuant to the information received, the Court again issued summons for defendant and directed

service at an address in Marion, Arkansas, on August 12, 2008. The Court also denied attorney Hance's motion to be relieved of his appointment, pending the results of the service on defendant. Summons was returned, unexecuted, as to defendant on September 11, 2008 (DE #34). B

Order dated September 23, 2008, the Court noted that Fed. R. Civ. P. 4(m) provides for a 120-day time limit for effecting service on a defendant, and informed plaintiff and his counsel of one final opportunity in which to provide a present address on defendant or to obtain service on defendant, within ten days of the date of the Order (DE #34). The Court further advised plaintiff that failure to respond or obtain service would result in the dismissal of this complaint without prejudice. As of this date, the Court has not received any additional information from the plaintiff or attorney Hance, and defendant Bishop has not been served with summons and a copy of plaintiff's complaint against him.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

This Court's September 23, 2008 Order constituted notification to the plaintiff, within the meaning of Rule 4, that service should be effected within a specified period of time. That time has now expired, and therefore, absent any communication from the plaintiff, the Court will dismiss his complaint without prejudice, and will relieve attorney Hance from his appointment. Accordingly,

IT IS, THEREFORE, ORDERED that plaintiff's complaint against defendant is DISMISSED without prejudice.

IT IS FURTHER ORDERED that attorney Clyde Hance is hereby relieved as appointed counsel

for the plaintiff.

IT IS SO ORDERED this 31st day of October, 2008.

Henry L. Jones, Jr.
United States Magistrate Judge